

C. F. TURLEY, JR.

IBLA 80-861

Decided December 4, 1981

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. NM MC 10667 through NM MC 10677.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of annual assessment work or notice of intention to hold the claim with the Bureau of Land Management on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

APPEARANCES: John F. Schaber, Esq., Deming, New Mexico, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

C. F. Turley, Jr., appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 16, 1980, declaring the Red Star #1 through #4 and #8 through #14 lode mining claims, NM MC 10667 through NM MC 10677, abandoned and void. <sup>1/</sup> The mining claims were deemed abandoned and void pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(c) and 3833.4(a), because no evidence of annual assessment work or notices of intention to hold the claims were filed on or before December 30, 1979, as required for claims located after October 21, 1976.

In his statement of reasons for appeal, appellant contends that his mining claims were originally located between 1970 and 1972 and location notices filed with the office of the county clerk, Grant County, New Mexico, at that time. On December 5, 1977, amended notices of location were filed as to each of these claims with the office of the county clerk and with BLM. Appellant argues that since the claims were located before October 21, 1976, he had until October 22, 1979, in which to record his notices of location with BLM; therefore, he concludes, he had until December 30, 1980, in which to file his first evidence of annual assessment work.

[1, 2] The case record reveals that the mining claims in issue were originally located prior to October 21, 1976; however, that fact does not change the result in this case. There was still a failure to satisfy the requirements of FLPMA and its implementing regulations. Section 314(a) of FLPMA, supra, provides that the owner of an unpatented mining claim located prior to October 21, 1976, "shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter" file evidence of annual assessment work or a notice of intention to hold the claim. The corresponding Departmental regulation, 43 CFR 3833.2-1(a), provides:

The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

Since the claims were located prior to October 21, 1976, and amended location notices were recorded with BLM on December 5, 1977,

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<sup>1/</sup> Appellant does not appeal the BLM decision to the extent that it declared the Turley #1 through #6 lode mining claims, NM MC 10678 through NM MC 10683, abandoned and void. While the BLM decision was styled "Vic Topmiller Jr. Vic Topmiller Assoc.," the case record indicates that Vic Topmiller, Jr., was the "Agent for Turley."

pursuant to section 314(a) of FLPMA, supra, evidence of annual assessment work or a notice of intention to hold was required to be filed with BLM at the very least on or before October 22, 1979. See Harvey A. Clifton, 60 IBLA 29 (1981); Perry L. Johnson, 57 IBLA 20 (1981). <sup>2/</sup> The same would hold true if appellant had waited until October 22, 1979, to record the notices of location because the statute requires the documentation to be filed "within the three-year period following October 21, 1976." (Emphasis added.) 43 U.S.C. § 1744(a) (1976).

This requirement is set forth, in more specific terms, in the regulation, which provides that the required documentation must be filed on or before December 30 of the year following the calendar year in which the notice of location is filed, or on or before October 22, 1979, "which ever date is sooner." (Emphasis added.) 43 CFR 3833.2-1(a). The date which is sooner, for a claim recorded October 22, 1979, is October 22, 1979, and not December 30, 1980. Appellant was clearly required to file on or before that date. Stanley Bishop, 50 IBLA 371 (1980); Kenneth K. Parker, 48 IBLA 129 (1980).

Failure to file timely evidence of annual assessment work or a notice of intention to hold will result in the mining claim being declared abandoned and void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a); Stanley Bishop, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

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<sup>2/</sup> The Clifton case involved the situation where a pre-FLPMA claim had been recorded in 1977 without proof of labor or a notice of intent to hold. BLM held the claim abandoned and void for failure to file proof of labor or a notice of intention to hold on or before Dec. 30, 1978, even though the claimant made such a filing in January 1979. We found that the claimant had complied with the statutory requirement of filing such a document on or before Oct. 22, 1979, and that the failure to comply with the regulatory requirement of 43 CFR 3833.2-1(a) requiring filing on or before Dec. 30, 1978, was a curable deficiency. However, in this case appellant failed to comply with the statutory requirement.

